1. There have been many articles written on Deck Cargo. Our purpose in looking at this topic is to focus on the specific issues relating to Deck Cargo.

2. The first question we need to ask is what is Deck Cargo? Deck cargo simply means cargo which is loaded on deck. Vessels are generally constructed so that cargo can be stowed in the holds. Loading of cargo on deck will entail higher risks due to the cargo being exposed to nature. This being the case, there is obviously a difference between loading under deck and on deck.

3. If the vessel has no space in the holds (due to voluminous cargo loaded) but could still carry cargo (as she is not down to her marks), Owners could offer to carry cargo on deck and for this may provide an incentive to the Shipper / Cargo interests by way of lower freight rates. In this way, Vessel Owners / Operators could maximize the utilization of the vessel.

4. Most of the Bills of Lading issued for shipment will either be governed by the Hague or the Hague Visby Rules (by operation of law or by way of the Clause Paramount).

5. Article 1 c of the Hague and Hague-Visby Rules defines “Goods” includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried. There are therefore two limbs to the definition of deck carriage provided in this Article and which is that for the deck cargo to be excluded by the Rules, the cargo must not only be carried on deck but also that the document issued must reflect this fact. In those circumstances, The Hague or Hague Visby Rules would not apply. Instead, common law would apply.
6. Bills of Lading would generally have a liberty clause entitling Owners / Carriers to load cargo on deck. As the cargo interests / intermediaries may not be involved in the loading operation, they may never know where the cargo is actually loaded (this generally happens in the container industry) and particularly prior to loading. If the cargo is actually loaded on deck and further if the Owners / Carriers have not taken approval prior to loading, any issue of bills of lading stating that the cargos have been loaded on deck should be resisted (example of such a clause is “Cargo Shipped on deck at Shippers risks and responsibility without liability to the vessel / owners / operators for any expenses, delays, loss or damage howsoever caused”) so as to ensure that The Hague / Hague Visby Rules continue to apply for the shipment (as mentioned in Pt 5 above).

7. There are also issues in relation to the insurance of deck cargo. Most of the cargo insurance policies state that they are governed by the Marine Insurance Act 1906 (of the United Kingdom). Rule 17 for the construction of policy in the first schedule of the Marine Insurance Act 1906 state “The term ‘goods’ means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.” With respect to the usage mentioned in Rule 17, some cargo is carried generally on deck such as containers on purpose built container vessels, logs and timber in log carriers, etc. For all other types of cargo, if specific coverage is not sought, then cargo interests may find at the time of a loss that their cargo policies do not engage as cargo was loaded on deck and that insurance has not been taken specifically on this basis.

8. Even if the Bills of Lading are not clased as deck cargo but cargo is actually loaded on deck, Cargo Insurers could well decide to deny cover on the basis that they had insured on the basis that cargo was loaded on the usual carrying place of the vessel (under deck). The cargo interests could well pursue the Owners / Carriers for their loss due to the breach of the contract of carriage and any successful recovery would depend on many factors including as to whether
Owners / Carriers could satisfy any judgment. The results would be similar for cases when the shipper specifically requests the Owners / Carriers to load the cargo under deck but the cargo is actually loaded on deck.

9. While Owners / Carriers may not be entitled to the various defenses available under the contract of carriage, they may be entitled to limit liability (see Kapitan Petko Voivoda decided by the English Court of Appeal in 2003). This may therefore mean that the cargo interests may not be adequately compensated for their losses by the Owners / Carriers and further they may have no insurance cover for this gap.

10. In conclusion, we would suggest the following:

i) Cargo interests / intermediaries should not agree to any Bills of Lading being clause as “Deck Cargo”, particularly when they have not been advised that the cargo is actually being loaded on deck.

ii) Upon being aware that the cargo is being loaded on deck, cargo interests / intermediaries should

   a) advise their insurers (cargo / liability) that the cargo is being loaded on deck and seek coverage accordingly.

   b) engage surveyors to ensure that proper care of cargo is being taken at the time of loading by way of proper securing, tarpaulin cover, etc.

iii) For transport intermediaries such as NVOCC, it would be appropriate to issue Bills of Lading similar to what is issued by the overlying carrier in order to avoid any liability gaps i.e. contract on back to back basis.